

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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RICARDO ZAYAS-TORRES,

Petitioner,

v.

No. 9:18-CR-0526  
(GTS/CFH)

DANIEL MARTUSCELLO,

Respondent.

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GLENN T. SUDDABY, United States District Judge<sup>1</sup>

**DECISION and ORDER**

Petitioner filed a petition for a writ of *habeas corpus* in this action pursuant to 28 U.S.C. § 2254, seeking to vacate his burglary conviction entered in the Supreme Court of Albany County, New York. (Dkt. No. 1.) In his petition, petitioner contends that the conviction violated his rights under the Constitution because (1) the trial court permitted the introduction of statements and evidence that should have been suppressed under the Fourth Amendment, (2) the evidence at trial was insufficient to convict him, and (3) his trial counsel was ineffective in a way that prejudiced him. (*Id.*) The Court referred the matter to the Hon. Christian F. Hummel, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

In his Report-Recommendation, issued on May 15, 2024, Magistrate Judge Hummel recommends that the Court deny the petition and decline to issue a certificate of appealability. (Dkt. No. 27.) More specifically, Magistrate Judge Hummel finds that nothing in the state-court

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<sup>1</sup> The Hon. Thomas J. McAvoy originally presided over this matter. The case has since be reassigned to the undersigned.

proceedings represented an unreasonable application of clearly established federal law or an unreasonable determination of the facts as presented in the state-court proceeding: New York courts provided Petitioner an opportunity to suppress evidence and statements, and the state-court decisions on those issues could clearly survive the deferential standard of review that applies to a federal *habeas corpus* proceeding. (*Id.*) In any event, Magistrate Judge Hummel finds, even if Petitioner's challenge to the sufficiency of the evidence could survive a procedural bar, the evidence presented at trial—which included evidence that Petitioner possessed evidence stolen during burglaries at residences to which he had connections—was sufficient to support his conviction; and nothing indicated that his trial attorney's performance fell below an objective standard of reasonableness, or that he was prejudiced in a way that meets the standard for a federal *habeas* action. (*Id.*) Finally, because reasonable jurists could not disagree about the merits of the Petition, Magistrate Judge Hummel recommends that the Court decline to issue a certificate of appealability. (*Id.*)

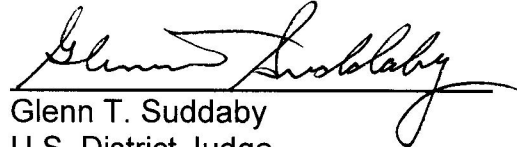
Petitioner has not filed an Objection to the Report-Recommendation, and the time for such objections has expired. (*See generally* Docket Sheet.) After carefully examining the record, this Court has determined that the Report-Recommendation is not subject to attack for clear error, and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

**ACCORDINGLY**, it is

**ORDERED** that Judge Hummel's Report-Recommendation (Dkt. No. 27) is **ACCEPTED** and **ADOPTED** in its entirety, and the Petition for a writ of habeas corpus is **DENIED** and **DISMISSED**; and it is further

**ORDERED** that the Court declines to issue a certificate of appealability, because Petitioner cannot make a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c).

Dated: November 1, 2024.  
Syracuse, New York

  
Glenn T. Suddaby  
U.S. District Judge